

33-18-601. Short title. This part may be cited as the "Montana Use of Credit Information in Personal Insurance Act".

History: En. Sec. 1, Ch. 363, L. 2005.

33-18-602. Purpose. The purpose of this part is to regulate the use of credit information for personal insurance so that consumers are afforded certain protections with respect to the use of credit information.

History: En. Sec. 2, Ch. 363, L. 2005.

33-18-603. Scope. This part applies to personal insurance and not to commercial insurance. For purposes of this part, "personal insurance" means private passenger automobile, home owners, motorcycle, mobile home owners, and noncommercial dwelling fire insurance policies and boat, personal watercraft, snowmobile, and recreational vehicle policies. These policies must be individually underwritten for personal, family, or household use. Other types of insurance may not be included as personal insurance for the purpose of this part.

History: En. Sec. 3, Ch. 363, L. 2005.

33-18-604. Definitions. For the purposes of this part, the following definitions apply:

(1) "Adverse action" means, in regard to the terms of coverage or amount of coverage of any insurance, existing or applied for, in connection with the underwriting of personal insurance, any of the following:

- (a) denial, nonrenewal, or cancellation of coverage;
- (b) an increase in any charge for coverage;
- (c) failure to give an otherwise available credit-related discount; or
- (d) a reduction or any other adverse or unfavorable change in the terms of coverage or the amount of coverage.

(2) "Affiliate" means a company that controls, is controlled by, or is under common control with another company.

(3) "Applicant" means an individual who has applied to be covered by a personal insurance policy with an insurer.

(4) "Consumer" means an insured whose credit information is used or whose insurance score is calculated in the underwriting or rating of a personal insurance policy or of an applicant for a personal insurance policy.

(5) "Consumer reporting agency" means any entity that, for monetary fees or dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties.

(6) "Credit information" means any credit-related information derived from a credit report, found on a credit report itself, or provided on an application for personal insurance. Information that is not credit-related may not be considered credit information regardless of whether it is contained in a credit report or in an application or is used to calculate an insurance score.

(7) "Credit report" means any written, oral, or other communication of information by a consumer reporting agency bearing on a consumer's creditworthiness, credit standing, or credit capacity that is used or expected to be used or collected in whole or in part for the purpose of serving as a factor to determine personal insurance premiums, eligibility for coverage, or tier placement.

(8) "Insurance score" means a number or rating that is derived from an algorithm, computer application, model, or other process that is based in whole or in part on credit information for the purposes of predicting the future insurance loss exposure of an individual applicant or insured.

History: En. Sec. 4, Ch. 363, L. 2005.

33-18-605. Use of credit information. (1) An insurer authorized to do business in this state that uses credit information to underwrite or rate risks may not:

- (a) use an insurance score that is calculated using income, gender, address, zip code, ethnic group, religion, marital status, or nationality of the consumer as a factor;
- (b) deny, cancel, or not renew a policy of personal insurance on the basis of credit information without consideration of any other applicable underwriting factor independent of credit information and not expressly prohibited by subsection (1)(a);
- (c) base an insured's renewal rates for personal insurance upon credit information without consideration of any other applicable factor independent of credit information;
- (d) take an adverse action against a consumer because the consumer does not have a credit card account without consideration of any other applicable factor independent of credit information;
- (e) consider an absence of credit information or an inability to calculate an insurance score in underwriting or rating personal insurance unless the insurer does one of the following:
 - (i) treats the consumer as otherwise approved by the commissioner if the insurer presents information that the absence or inability relates to the risk for the insurer;
 - (ii) treats the consumer as if the consumer had neutral credit information, as defined by the insurer; or
 - (iii) excludes the use of credit information as a factor and uses only other underwriting criteria;
- (f) take an adverse action against a consumer based on credit information unless an insurer obtains and uses a credit report issued or an insurance score calculated within 90 days from the date that the policy is first written or renewal is issued;
- (g) use credit information unless not later than every 36 months following the last time that the insurer obtained current credit information for the insured, the insurer recalculates the insurance score or obtains an updated credit report. Regardless of the requirements of this subsection (1)(g):
 - (i) at annual renewal, upon the request of a consumer or the consumer's agent, the insurer shall reunderwrite and rerate the policy based upon a current credit report or insurance score. An insurer need not recalculate the insurance score or obtain the updated credit report of a consumer more frequently than once in a 12-month period.
 - (ii) the insurer has the discretion to obtain current credit information upon any renewal before the 36 months provided for in subsection (1)(g), if consistent with its underwriting guidelines;
 - (iii) an insurer may but does not have to obtain current credit information for an insured, despite the requirements of subsection (1)(g)(i), if one of the following applies:
 - (A) the insurer is treating the consumer as otherwise approved by the commissioner;
 - (B) the insured is in the most favorably priced tier of the insurer within a group of affiliated insurers;
 - (C) credit was not used for underwriting or rating the insured when the policy was initially written;
 - (D) the insurer reevaluates the insured beginning not later than 36 months after inception and at similar succeeding times based upon other underwriting or rating factors, excluding credit information.
- (h) use a credit score that treats any of the following as a negative factor for the purpose of underwriting or rating a policy of personal insurance:
 - (i) credit inquiries not initiated by the consumer or inquiries requested by the consumer for the consumer's own credit information;
 - (ii) inquiries relating to insurance coverage, if so identified on a consumer's credit report;
 - (iii) collection accounts with a medical industry code, if so identified on the consumer's credit report;
 - (iv) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the home mortgage industry and made within 30 days of one another, unless only one inquiry is considered;
 - (v) multiple-lender inquiries, if coded by the consumer reporting agency on the consumer's credit report as being from the automobile lending industry and made within 30 days of one another, unless only one inquiry is considered;

- (vi) the number of credit inquiries;
- (vii) the consumer's use of a particular type of credit card, charge card, or debit card or the number of credit cards obtained by a consumer;
- (viii) a loan if information from the credit report makes it evident that the loan is for the purchase of an automobile or a personal residence. However, an insurer may consider the bill payment history of any loan, the total number of loans, or both.
- (ix) the consumer's total available line of credit or total debt. However, an insurer may consider:
 - (A) the consumer's bill payment history on the debt; or
 - (B) the total amount of outstanding debt if the outstanding debt exceeds the total line of credit.
- (2) (a) An insurer shall, on written request from an applicant or an insured, provide reasonable underwriting or rating exceptions for a consumer whose credit report has been directly affected by an extraordinary event.
 - (b) An insurer may require reasonable written and independently verifiable documentation of the event and the effect of the event on the consumer's credit before granting an exception. An insurer is not required to consider repeated extraordinary events or extraordinary events the insurer reconsidered previously.
 - (c) An insurer may also consider granting an exception to a consumer for an extraordinary event not listed in this section.
 - (d) An insurer may not be considered to be out of compliance with its filed rules and rates as a result of granting an exception pursuant to this subsection (2).
 - (e) As used in this subsection (2), "extraordinary event" means:
 - (i) expenses related to a catastrophic injury or illness;
 - (ii) temporary loss of employment;
 - (iii) death of an immediate family member; or
 - (iv) theft of identity pursuant to 45-6-332.

History: En. Sec. 5, Ch. 363, L. 2005.

33-18-606. Dispute resolution and error correction. If it is determined through the dispute resolution process set forth in the federal Fair Credit Reporting Act, 15 U.S.C. 1681i(a)(5), that the credit information of a current insured was incorrect or incomplete and if the insurer receives notice of that determination from either the consumer reporting agency or the insured, the insurer shall reunderwrite and re-rate the consumer within 30 days of receiving the notice. After reunderwriting or re-rating the insured, the insurer shall make any adjustments necessary consistent with its underwriting and rating guidelines. If an insurer determines that the insured has overpaid the premium, the insurer shall refund to the insured the amount of overpayment calculated back to the shorter of either the last 12 months of coverage or the actual policy period.

History: En. Sec. 6, Ch. 363, L. 2005.

33-18-607. Initial notification. (1) If an insurer writing personal insurance uses credit information in underwriting or rating a consumer, the insurer or its agent shall disclose, either on the insurance application or at the time that the insurance application is taken, that it may obtain credit information in connection with the application. The disclosure must be either written or provided to an applicant in the same medium as the application for insurance. The insurer does not have to provide the disclosure statement required under this section to any insured on a renewal policy if the consumer has previously been provided a disclosure statement.

(2) Use of the following disclosure statement constitutes compliance with this section: "In connection with this application for insurance, we may review your credit report or obtain or use a credit-based insurance score based on the information contained in that credit report. We may use a third party in connection with the development of your insurance score."

History: En. Sec. 7, Ch. 363, L. 2005.

33-18-608. Adverse action notification. If an insurer takes an adverse action based upon credit information, the insurer shall:

(1) provide notification to the consumer that an adverse action has been taken, in accordance with the requirements of the federal Fair Credit Reporting Act, 15 U.S.C. 1681m(a); and

(2) provide notification to the consumer explaining the reason for the adverse action. The reasons must be provided in sufficiently clear and specific language so that a person can identify the basis for the insurer's decision to take an adverse action. The notification must include a description of up to four factors that were the primary influences of the adverse action. The use of generalized terms, such as "poor credit history", "poor credit rating", or "poor insurance score", does not meet the explanation requirements of this subsection. Standardized credit explanations provided by consumer reporting agencies or other third-party vendors are considered to comply with this section.

History: En. Sec. 8, Ch. 363, L. 2005.

33-18-609. Filing. (1) Insurers that use insurance scores to underwrite and rate risks shall file their scoring models or other scoring processes with the commissioner. A third party may file scoring models on behalf of insurers.

(2) A filing relating to credit information is considered a trade secret under the laws of this state.

History: En. Sec. 9, Ch. 363, L. 2005.

33-18-610. Indemnification. An insurer shall indemnify, defend, and hold insurance producers harmless from and against all liability, fees, and costs arising out of or relating to the actions, errors, or omissions of an insurance producer that obtains or uses credit information or insurance scores for an insurer if the insurance producer follows the instructions of or procedures established by the insurer and complies with any applicable law or regulation. This section may not be construed to provide a consumer or other insured with a cause of action that does not exist in the absence of this section.

History: En. Sec. 10, Ch. 363, L. 2005.

33-18-611. Sale of policy term information by consumer reporting agency. (1) A consumer reporting agency may not provide or sell data or lists that include any information that in whole or in part was submitted in conjunction with an insurance inquiry about a consumer's credit information or a request for a credit report or insurance score. This information includes but is not limited to the expiration dates of an insurance policy or any other information that may identify time periods during which a consumer's insurance may expire and the terms and conditions of the consumer's insurance coverage.

(2) The restrictions provided in subsection (1) do not apply to data or lists that the consumer reporting agency supplies to the insurance producer from whom information was received, the insurer on whose behalf the insurance producer acted, or the insurer's affiliates or holding companies.

(3) This section may not be construed to restrict any insurer from being able to obtain a claims history report or a motor vehicle report.

History: En. Sec. 11, Ch. 363, L. 2005.